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October 25, 2018

The Honorable Judge Denise L. Cote
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

***Re: 1:18-cv-06582-DLC Plaintiff's Response to Defendant's Letter Motion to Dismiss
Pursuant to Fed. R. Civ. P. 4(m)***

Dear Judge Cote:

Please allow this letter to serve as Plaintiff's Response to Defendant's Letter Motion to Dismiss Pursuant to Fed. R. Civ. P. 4(m) [CM/ECF 15]. For the reasons stated below, Plaintiff respectfully requests that this court deny Defendant's motion to dismiss.

1. Plaintiff commenced this action against the internet subscriber assigned IP 74.66.244.146 on July 22, 2018, at which time it filed a complaint alleging that Defendant copied and distributed one or more of Plaintiff's copyrighted works, all without Plaintiff's consent. *See* CM/ECF 1.

2. On August 15, 2018, Plaintiff was granted leave to serve a third-party subpoena on Defendant's ISP, Charter Communications, Inc., to obtain the Defendant's identifying information [CM/ECF 8]. Without the subpoena response Plaintiff does not have the information needed to investigate whether it is appropriate to name the subscriber to the ISP

account as the infringer, nor an address for service.

3. While Plaintiff issued the subpoena on August 17, 2018 it did not receive a response until October 4, 2018, nearly two months later. This is a delay that was not a result of Plaintiff's failure to proceed diligently.

4. Plaintiff and Defendant have been in settlement negotiations since Defendant's counsel invited negotiations to begin on September 12, 2018, the substance of which will not be discussed, with Plaintiff's most recent communication being sent on October 23, 2018.

5. Defendant's counsel filed a Notice of Appearance on September 21, 2018 [CM/ECF 9].

6. Defendant's counsel did not disclose Defendant's identity or address during negotiations, and no waiver of service was given so Amendment of the Complaint was still not possible until after receipt of the ISP response.

7. Promptly following the ISP response being given on October 4, 2018, Plaintiff began investigation into the plausibility of subscriber as the infringer. Plaintiff has now completed its investigation and is prepared to file an Amended Complaint naming a Defendant with specificity (under seal pursuant to this Court's Order at CM/ECF 11), and is prepared to effectuate service. However, Plaintiff was negotiating in good faith in an attempt to settle prior to amending the complaint and naming a defendant. Defendant's counsel is well apprised of this fact. There is no prejudice to Defendant in allowing this case to continue with service of an Amended Complaint.

8. Further, Plaintiff timely requested an extension from the court regarding the time to complete service [CM/ECF 13] to allow time for Plaintiff to amend and serve. As explained above, Defendant's ISP did not return its subpoena response identifying the name and address of

the putative defendant until October 4, 2018. Until that response it was impossible to investigate the evidence of the subscriber as the infringer.

9. The Court denied Plaintiff's request for extension without comment. [CM/ECF 14].

10. Plaintiff respectfully request this Honorable Court reconsider its denial of the good faith request for an extension of Plaintiff's time to amend and serve, and to deny Defendant's instant letter motion requesting dismissal of this action.

11. As explained above, Plaintiff has diligently prosecuted this matter and the delays in this case are not the result of any failure to prosecute by Plaintiff, they are simply a matter of the delay in receipt of the subpoena response from defendant's ISP, and the brief time Plaintiff held on amending to accommodate Defendant's request to negotiate.

WHEREFORE, Plaintiff respectfully requests that this Court deny the Defendant's motion to dismiss and extend the time within which Plaintiff has to effectuate service of the summons and Complaint on Defendant until December 4, 2018.

Dated: October 25, 2018

Respectfully submitted,

By: /s/ Kevin T. Conway
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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Kevin T. Conway